

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BERNADETTE HIGHTOWER, on behalf of
herself and all other similarly situated,

Plaintiff,

v.

RECEIVABLES PERFORMANCE
MANAGEMENT, LLC,

Defendant.

Case No. 2:22-cv-01683-RSM

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL**

WHEREAS, a consolidated class action is pending in this Court entitled *Hightower et al. v. Receivables Performance Management, LLC*, Case No. 2:22-cv-01683-RSM (the “Action”);

WHEREAS, Plaintiffs BERNADETTE HIGHTOWER, LATERSHIA JONES, GEORGE DEAN, and BRUCE MARK WOODRUFF, individually and on behalf of all others similarly situated (collectively “Plaintiffs”) and Defendant RECEIVABLES PERFORMANCE MANAGEMENT, LLC (“RPM” or “Defendant”) have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation and provides for a complete dismissal with prejudice of the claims asserted against Defendant in the above-captioned action (the “Action”) on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

1 **WHEREAS**, Plaintiffs have made an application for an order, pursuant to Rule 23 of
 2 the Federal Rules of Civil Procedure, preliminarily approving the Settlement in accordance
 3 with the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement
 4 only, appointing Plaintiffs as Class Representatives, appointing Class Counsel as counsel for
 5 the Settlement Class, appointing Kroll Settlement Administration LLC as Settlement
 6 Administrator, and allowing notice to Settlement Class Members as more fully described herein
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8 **WHEREAS**, the Court has read and considered: (a) Plaintiffs' motion for preliminary
 9 approval of the Settlement, and the papers filed and arguments made in connection therewith;
 10 and (b) the Settlement Agreement and exhibits attached thereto; and

11 **WHEREAS**, unless otherwise defined herein, the capitalized terms herein shall have
 12 the same meaning as they have in the Settlement Agreement.

13 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

14 1. **Class Certification for Settlement Purposes Only.** For settlement purposes
 15 only and pursuant to Fed. R. Civ. P. 23(b)(3) and (e), the Court certifies, solely for purposes of
 16 effectuating the proposed Settlement, a Settlement Class in this matter defined as follows:
 17

18 All persons who were sent notification by RPM that their personal information
 19 and/or protected health information was or may have been compromised in the
 20 Data Incident.

21 The Settlement Class includes approximately 3,766,573 people. The Settlement Class
 22 specifically excludes: (1) the judges presiding over this Action, and members of their direct
 23 families; (2) RPM, its subsidiaries, parent companies, successors, predecessors, and any entity
 24 in which RPM or its parents have a controlling interest and their current or former officers,
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1 directors, and employees; and (3) Settlement Class Members who submit a valid a Request for
2 Exclusion prior to the Opt-Out Deadline.

3 Additionally, for settlement purposes only and pursuant to Fed. R. Civ. P. 23(b)(3) and
4 (e), the Court certifies, solely for the purposes of effectuating the proposed Settlement, a
5 California Settlement Subclass in this matter defined as follows:

6 All persons who are members of the Settlement Class who are residents of the
7 State of California.

8
9 2. **Class Findings:** The Court provisionally finds, for settlement purposes only, that:
10 (a) the Settlement Class and California Settlement Subclass is so numerous that joinder of all
11 Settlement Class Members and California Settlement Subclass Members would be impracticable;
12 (b) there are issues of law and fact common to the Settlement Class and the California Settlement
13 Subclass; (c) the claims of the Class Representatives are typical of and arise from the same
14 operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the
15 claims of Class Representative Bruce Mark Woodruff are typical of and arise from the same
16 operative facts and seek similar relief as the claims of the California Settlement Subclass
17 Members; (e) the Class Representatives and Settlement Class Counsel will fairly and adequately
18 protect the interests of the Settlement Class and the California Settlement Subclass as the Class
19 Representatives have no interests antagonistic to or in conflict with the Settlement Class and/or
20 the California Settlement Subclass and have retained experienced and competent counsel to
21 prosecute this matter on behalf of the Settlement Class and the California Settlement Subclass;
22 (e) questions of law or fact common to Settlement Class Members and the California Settlement
23 Subclass Members predominate over any questions affecting only individual members; and (f) a
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1 class action and class settlement is superior to other methods available for a fair and efficient
2 resolution of this controversy.

3 3. **Class Representatives and Settlement Class Counsel:** Bernadette Hightower,
4 Latershia Jones, George Dean, and Bruce Mark Woodruff are hereby provisionally designated
5 and appointed as the Class Representatives. The Court provisionally finds that the Class
6 Representatives are similarly situated to absent Settlement Class Members and therefore typical
7 of the Settlement Class and that they will be adequate Class Representatives.
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9 Bruce Mark Woodruff is hereby provisionally designated and appointed as the
10 California Settlement Subclass Representative. The Court provisionally finds that the
11 California Settlement Subclass Representative is similarly situated to absent California
12 Settlement Subclass Members and therefore typical of the California Settlement Subclass and
13 that they will be an adequate California Settlement Subclass Representative.
14

15 The Court finds that the following counsel are experienced and adequate counsel and
16 are hereby provisionally designated as Settlement Class Counsel: Bryan Bleichner of Chestnut
17 Cambronne, P.A., John Yanchunis of Morgan & Morgan Complex Litigation Group, and
18 Kaleigh N. Boyd of Tousley Brain Stephens, PLLC.

19 4. **Preliminary Settlement Approval.** The Court hereby preliminarily approves
20 the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable, and
21 adequate to the Settlement Class, subject to further consideration at the Final Approval Hearing
22 to be conducted as described below. Pursuant to Rule 23(e)(1) of the Federal Rules of Civil
23 Procedure, the Parties have shown that the Court will likely be able to approve the proposal
24 under Rule 23(e)(2), which requires the Court to consider the following factors in determining
25 whether a proposed settlement is fair, reasonable, and adequate:
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- 1 (a) have the class representatives and class counsel adequately represented
- 2 the class;
- 3 (b) was the proposal negotiated at arm's length;
- 4 (c) is the relief provided for the class adequate, taking into account:
 - 5 (i) the costs, risks, and delay of trial and appeal;
 - 6 (ii) the effectiveness of any proposed method of distributing
 - 7 relief to the class, including the method of processing
 - 8 class-member claims;
 - 9 (iii) the terms of any proposed award of attorneys' fees,
 - 10 including timing of payment; and
 - 11 (iv) any agreement required to be identified under Rule
 - 12 23(e)(3); and
 - 13
 - 14
 - 15 (d) does the proposal treat class members equitably relative to each other.

16 For the purposes of preliminary approval, the Court finds: (a) Plaintiff and Plaintiff's
 17 Counsel have adequately represented the Settlement Class; (b) the Settlement is the result of
 18 arm's length negotiations conducted under the auspices of Hon. Wayne Andersen (Ret.); (c) the
 19 relief provided is adequate when considering (i) the substantial costs, risks, and delay of
 20 continued litigation, (ii) the proposed method for processing Settlement Class Members' claims
 21 and distributing relief to eligible claimants is standard in data breach class action settlements
 22 and has been found to be effective in these types of settlements, and (iii) the conditions under
 23 which the Parties may terminate the Settlement is standard and has no negative impact on the
 24 fairness of the Settlement; and (d) the Settlement treats Settlement Class Members equitably
 25 relative to one another.
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1 5. **Final Approval Hearing.** A Final Approval Hearing shall be held at 10:00 a.m.
2 on December 6, 2024, in the United States District Court for the Western District of Washington,
3 located at 700 Stewart Street in Seattle, Washington, for the following purposes: (a) to determine
4 whether the proposed Settlement on the terms and conditions provided for in the Settlement
5 Agreement is fair, reasonable and adequate to the Settlement Class; (b) to determine whether a
6 proposed Judgment substantially in the form annexed to the Settlement Agreement as Exhibit 5
7 should be entered dismissing the Action with prejudice against Defendant; (c) to determine
8 whether the motion of Settlement Class Counsel for a Fee Award and Costs should be approved;
9 (d) to determine whether the motion of the Class Representatives for Service Award Payments
10 should be approved; and (e) to consider any other matters that may be properly brought before
11 the Court in connection with the Settlement. Notice of the Settlement and the Final Approval
12 Hearing shall be given to the Settlement Class Members as set forth in Paragraph 7 of this Order.
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14 6. The Court may adjourn the Final Approval Hearing without further notice to the
15 Settlement Class Members, and may approve the proposed Settlement with such modifications
16 as the Parties may agree to, if appropriate, without further notice to the Settlement Class
17 Members.
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19 7. **Retention of Claims Administrator and Manner of Giving Notice.** Class
20 Counsel is hereby authorized to retain Kroll Settlement Administration LLC (the “Settlement
21 Administrator”) to supervise and administer the notice procedure in connection with the
22 proposed Settlement as well as the processing of Claims as set for more fully below. Notice of
23 the Settlement and the Final Approval Hearing shall be given as follows:
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25 (a) Within ten (10) days of this Order, Defendant shall provide the Class
26 List to the Settlement Administrator;

1 (b) As soon as practicable following entry of this Order, the Settlement
2 Administrator shall establish the Settlement Website and Settlement Toll-Free Number as set
3 forth in the Settlement Agreement;

4 (c) Within forty (40) days of this Order, the Settlement Administrator shall
5 disseminate the Short Form Notice via U.S. mail to all Settlement Class Members. At that time,
6 the Settlement Administrator shall make the Long Form Notice and Claim Form available to
7 Settlement Class Members on the Settlement Website.
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9 8. **Approval of Form and Content of Notice.** The Court (a) approves, as to form
10 and content, the Summary Notice, the long form Notice, and Claim Form attached to the
11 Settlement Agreement as Exhibits 1, 2 and 3, and as modified by the Parties and filed with the
12 Court on July 17, 2024 (Dkt. # 68-1) and (b) finds that the Notice provided to Settlement Class
13 Members as set forth in the Settlement Agreement (i) is the best notice practicable under the
14 circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to
15 apprise the Settlement Class Members of the pendency of the Action, of the effect of the
16 proposed Settlement (including the releases to be provided thereunder), of Class Counsel's
17 request for Fee Award and Costs, of Class Representatives' request(s) for Service Award
18 Payment(s), of their right to object to the Settlement, Class Counsel's request for Fee Award
19 and Costs, and/or Class Representatives' request(s) for Service Award Payment(s), of their
20 right to exclude themselves from the Settlement Class, and of their right to appear at the Final
21 Approval Hearing; (iii) constitutes due, adequate and sufficient notice to all persons entitled to
22 receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the
23 Federal Rules of Civil Procedure, the United States Constitution (including the Due Process
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1 Clause), and all other applicable law and rules. The date and time of the Final Approval
2 Hearing shall be included in the Notice before it is distributed.

3 9. **Participation in the Settlement.** Settlement Class Members who qualify for
4 and wish to submit a Claim Form shall do so in accordance with the requirements and
5 procedures specified in the Notice and the Claim Form and must do so within sixty (60) days
6 after the Notice is issued to the Settlement Class Members. If a Final Approval Order and
7 Judgment is entered, all Settlement Class Members who qualify for any benefit under the
8 Settlement but fail to submit a claim in accordance with the requirements and procedures
9 specified in the Notice and the Claim Form shall be forever barred from receiving any such
10 benefit, but will in all other respects be subject to and bound by the provisions in the Settlement
11 Agreement, the Release included in that Settlement Agreement, and the Final Approval Order
12 and Judgment.
13

14 10. **Claims Process and Distribution and Allocation Plan.** Class Representatives
15 and Defendant have created a process for assessing and determining the validity and value of
16 claims and a payment methodology to Settlement Class Members who submit a timely, valid
17 Claim Form. The Court preliminarily approves the claims process described in the Settlement
18 Agreement and directs that the Settlement Administrator effectuate the distribution of
19 Settlement consideration according to the terms of the Settlement Agreement, should the
20 Settlement be finally approved.
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22 11. **Exclusion from Class.** Any Settlement Class Member who wishes to be
23 excluded from the Settlement Class must mail a written notification of the intent to exclude
24 himself or herself from the Settlement Class to the Settlement Administrator at the address
25 provided in the Notice, postmarked no later than **60 Days after the Notice Deadline** (the “Opt-
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1 Out Deadline”). The written notification must include the name of the proceeding, the
2 individual’s full name, current address, personal signature, and the words “Request for
3 Exclusion” or a comparable statement that the individual does not wish to participate in the
4 Settlement at the top of the communication.

5 Any Settlement Class Member who does not timely and validly exclude himself or
6 herself from the Settlement shall be bound by the terms of the Settlement Agreement. If a Final
7 Approval Order and Judgment is entered, any Settlement Class Member who has not submitted
8 a timely, valid written notice of exclusion from the Settlement Class shall be bound by all
9 proceedings, orders, and judgments in this matter, including but not limited to the Release set
10 forth in the Final Approval Order and Judgment, including Settlement Class Members who
11 have previously initiated or who subsequently initiate any litigation against any or all of the
12 Released Parties relating to the claims and transactions released in the Settlement Agreement.
13 All Settlement Class Members who submit valid and timely notices of exclusion from the
14 Settlement Class shall not be entitled to receive any benefits of the Settlement.
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17 12. **Objections and Appearances**. No Settlement Class Member shall be heard, and
18 no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member
19 shall be received and considered by the Court, unless the objection is mailed to the Settlement
20 Administrator, post marked no later than **60 days after the notice deadline** as specified in the
21 Notice and Paragraph 76 of the Settlement Agreement. For an objection to be considered by the
22 Court, the objection must also include all of the information set forth in Paragraph 76 of the
23 Settlement Agreement, which is as follows: (i) the name of the proceedings; (ii) the Settlement
24 Class Member’s full name, current mailing address, and telephone number; (iii) a statement
25 that states with specificity the grounds for the objection, as well as any documents supporting
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1 the objection; (iv) a statement as to whether the objection applies only to the objector, to a
2 specific subset of the class, or to the entire class; (v) the identity of any attorneys representing
3 the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her
4 attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in
5 which the objecting Settlement Class Member and/or his/her attorney has lodged an objection
6 to a class action settlement; and (viii) the signature of the Settlement Class Member or the
7 Settlement Class Member's attorney.
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9 13. Any Settlement Class Member who fails to comply with the provisions in
10 Paragraph 11 may waive and forfeit any and all rights he or she may have to object, and shall
11 be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings,
12 orders, and judgments in this matter, including, but not limited to, the release in the Settlement
13 Agreement if a Final Approval Order and Judgment is entered. If a Final Approval Order and
14 Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed
15 herein shall be deemed to have waived his or her objections and shall be forever barred from
16 making any such objections in this Action or in any other proceeding or from challenging or
17 opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement,
18 the motion for Service Award Payment(s), or the motion for Fee Award and Costs.
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20 14. **Termination of Settlement**. This Order shall become null and void and shall be
21 without prejudice to the rights of the Parties, all of whom shall be restored to their respective
22 positions existing as of the date of the execution of the Settlement Agreement if the Settlement
23 is not finally approved by the Court or is terminated in accordance with the Settlement
24 Agreement. In such event, the Settlement and Settlement Agreement shall become null and
25 void and be of no further force and effect, and neither the Settlement Agreement nor the
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1 Court's orders, including this Order, relating to the Settlement shall be used or referred to for
2 any purpose whatsoever.

3 15. **Use of Order.** This Order shall be of no force or effect if a Final Approval
4 Order and Judgment is not entered or there is no Effective Date and shall not be construed or
5 used as an admission, concession, or declaration by or against Defendant of any fault,
6 wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed
7 or used as an admission, concession, or declaration by or against the Settlement Class
8 Representative or any other Settlement Class Member that his or her claim lacks merit or that
9 the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any
10 defense or claim he, she, or it may have in this litigation or in any other lawsuit.

12 16. **Stay of Proceedings and Temporary Injunction.** Until otherwise ordered by
13 the Court, the Court stays all proceedings in the Action other than proceedings necessary to
14 carry out or enforce the terms and conditions of the Settlement Agreement. Pending final
15 determination of whether the Settlement should be approved, the Court bars and enjoins
16 Plaintiffs, and all other members of the Settlement Class, from commencing or prosecuting any
17 and all of the Released Claims against the Released Entities.

19 17. **Settlement Administration Fees and Expenses.** All reasonable costs incurred
20 by notifying Settlement Class Members of the Settlement and administering the Settlement
21 shall be paid as set forth in the Settlement Agreement. However, the costs of notice and
22 administration shall not exceed \$1,306,000.00 absent further Order of the Court.

24 18. **Settlement Fund.** The contents of the Settlement Fund shall be deemed and
25 considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the
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1 Court, until such time as funds shall be distributed pursuant to the Settlement Agreement and/or
2 further order(s) of the Court.

3 19. **Taxes.** The Settlement Administrator is authorized and directed to prepare any
4 tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay
5 from the Settlement Fund any taxes owed with respect to the Settlement Fund, and to otherwise
6 perform all obligations with respect to taxes and any reporting or filings in respect thereof
7 without further order of the Court in a manner consistent with the provisions of the Settlement
8 Agreement.
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10 20. The Court retains jurisdiction to consider all further applications arising out of
11 or connected with the proposed Settlement.

12 21. **Summary of Deadlines.** The preliminarily approved Settlement shall be
13 administered according to its terms pending the Final Approval Hearing. Deadlines arising
14 under the Settlement Agreement and this Order include but are not limited to:
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16 **Notice Deadline:** 40 Days after Preliminary Approval Order

17 **Motions for Final Approval, Service Award Payment(s), and Attorneys' Fee**

18 **Award and Costs:** 30 days after Notice Deadline. Plaintiffs may file a Reply, if any, in support
19 of their Motions for Final Approval, Service Award Payments and Attorneys' Fee Award and
20 Costs within 14 days following the Objection Deadline.
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22 **Opt-Out Deadline:** 60 Days after Notice Date

23 **Objection Deadline:** 60 Days after Notice Date

24 **Claims Deadline:** 60 Days after Notice is sent to the Settlement Class
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RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE